

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JOHN LOAR, et al.,
Plaintiffs and Respondents,
v.
RICHARD SINGER, et al.,
Defendants and Appellants.

A104489

(Contra Costa County
Super. Ct. No. C02-01381)

I. INTRODUCTION

Defendants and appellants Richard and Nancy Singer contend the trial court abused its discretion in setting aside a stipulation and order for binding arbitration and denying their motion to compel compliance with the order for binding arbitration. We conclude the trial court did not abuse its discretion and, therefore, affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

The dispute in this matter arises out of a residential real estate transaction in Danville, California, between the Singers and plaintiffs and respondents John and Monica Loar. In 2000, the Loars bought the Singers' house for \$1.7 million.

In 2002, the Loars sued the Singers and the Singers' realtor, Better Homes and Bette Sue Schack. The Loars alleged there were significant problems with drainage, flooding and grading. The complaint also alleged that there were other undisclosed issues "related to the roof, leaks in the floor, subsidence in the flooring in the home, undisclosed repairs to the home with materials which might be hazardous to occupants,

mold issues and other problems.” The complaint made out claims for breach of contract, negligent misrepresentation against the Singers and for failure to disclose and fraud against the Singers and Schack.

The Singers sought to have the claims against them arbitrated, pursuant to the Real Estate Purchase Agreement between the Singers and the Loars. After the Singers made this demand, the Loars changed counsel and filed an amended complaint. This amended complaint added a bad faith claim against the Loars’ homeowners’ insurance, State Farm. The complaint also asserted a negligent design claim and a breach of warranty claim against the Raneri & Long Roofing Company for its work on the roof of the house which, according to the complaint, resulted in “multiple leaks that have damaged the property.”

Shortly after the amended complaint was filed, the Singers moved to compel arbitration. The next month, in November 2002, the Loars stipulated to submitting their claims against the Singers to binding arbitration. The parties agreed that all judicial proceedings would be stayed as to the other defendants until this arbitration concluded. The court ordered the matter to arbitration and the parties set April 15, 2003, as the date for the arbitration.

In January 2003, the Singers delivered documents to the Loars as part of the arbitration discovery process. These documents included several letters from Richard Singer to Raneri & Long Roofing Company. In these letters, Singer asserted that Raneri & Long had, through “undisputed negligence” almost bl[own] up my house.” He described how “I only avoided physical injury by not being at home when the ceiling finally caved in over my desk where I do my work.” The letter also referred to “terrible room damage.” Other letters described “five months of tremendous disruption and inconvenience” and mentioned a “realtor friend” who had recommended that the Singers re-carpet portions of their home. Singer also described the destruction of his home office “as the result of the carelessness of your roofers.”

The Loars changed counsel in March 2003, and the parties agreed to take the arbitration off calendar in light of the new counsel’s schedule. The parties communicated back and forth regarding setting a date for the arbitration, but did not choose one and, in

August 2003, the Loars moved to Set Aside the Stipulation and Order for Arbitration. In this motion, the Loars contended that they learned in January 2003, after inspecting the documents quoted above, that the Singers had concealed the existence of serious problems with the property and that the Singers' realtor, Bette Sue Schack, had assisted the Singers in concealing these problems. The Loars also contended that, had they been aware that the roof installed by Raneri & Long had such serious problems, they would not have agreed to stipulate to binding arbitration with the Singers. They stated that their claim against the Singers was more intertwined with their claims against the realtor and the roofer than they had earlier believed. The Singers opposed the motion and moved for an order compelling arbitration.

The trial court granted the motion to set aside the order compelling arbitration. This timely appeal followed.

III. DISCUSSION

Citing *In re Marriage of Jacobs* (1982) 128 Cal.App.3d 273, 283, footnote 3, the trial court found that because "there have been unanticipated changes in the underlying case," the case was no longer appropriate for arbitration. The court found that "the interests of justice and judicial economy are not now served by the arbitration" and granted the motion to set aside the stipulation and order for arbitration. In reaching this decision, the trial court pointed out that what had begun as an action against the sellers for concealment of defects in the house, had become a construction defect action involving Raneri & Long Roofing Company, a party who, like the Singers' realtor, would not be subject to the arbitration provision in the purchase agreement.

The Singers now argue that the trial court abused its discretion in reaching this conclusion. We disagree.

The trial court specifically premised its order on its equitable power to set aside a stipulation. Under this power, "[i]t is within the discretion of the court to set aside a stipulation on grounds of inadvertence, excusable neglect, fraud, mistake, or where the facts stipulated have changed, or there has been a change in underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust

to enforce the stipulation.” (*In re Marriage of Jacobs, supra*, 128 Cal.App.3d at p. 283, fn. 3.) We review this order under the abuse of discretion standard of review. (*Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 484.)

Both sides assert that we must determine whether substantial evidence supports the trial court’s decision. This is incorrect. The admonition cited by the Loars that, in applying the abuse of discretion standard of review, we “accept[] the trial court’s resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences” (*In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 358) does not mean that we subject the trial court’s decision to the substantial evidence standard of review. Rather, as one commentator explains, “Unlike the substantial evidence rule, which measures the quantum of proof adduced in the proceedings below . . . , the abuse of discretion standard measures whether, given the established evidence, the lower court’s action ‘falls within the permissible range of options set by the legal criteria.’ [Citation.] [¶] The substantial evidence rule deals with evidentiary proof, while the abuse of discretion standard is concerned with *legal principles*.” (Eisenberg, et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2003) ¶ 8:88, p. 8-35.) Thus, we are not concerned with whether there is sufficient evidence to support the trial court’s order, but with whether, *given the established evidence*, the trial court acted within its discretion in granting the motion. In determining what the “established evidence” actually is, we “accept[] the trial court’s resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences.” (*In re Executive Life Insurance Co., supra*, 32 Cal.App.4th at p. 358.)

Although the Singers argue that the trial court’s decision is wholly unsupported by any facts, this is simply not the case. The trial court not unreasonably concluded that, when the Loars stipulated to arbitration, they understood their claims to be primarily against the Singers, under an agreement that provided for arbitration of such claims. Certainly, the bulk of the claims in the Loars’ original and amended complaint center on the Singers’ failure to disclose. The trial court also concluded that, after conducting discovery, the Loars discovered that their claims against other parties were far more

extensive than they had originally believed and far more intertwined with their claims against the Singers. For example, the documents the Loars received during discovery indicated that the roof the Loars believed had a leak had in fact partially collapsed at one point, something Richard Singer, and possibly the Singers' agent, was aware of before the sale and for which Raneri & Long was, in the Singer's view, responsible. In light of this information, the trial court was well within its discretion in concluding that to first require the Loars to arbitrate their claims against the Singers and then proceed to a trial of their extensive and factually interrelated claims against other parties involved in the dispute would require a needless duplication of efforts which would be both uneconomical and unjust.

The Singers, citing *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 791, argue that the evidence before the trial court amounted to nothing more than "merely a lack of full knowledge of the facts, which . . . is due to the failure of a party to exercise due diligent to ascertain them" and, therefore, cannot be a ground for granting relief. *Robinson* is inapposite. In that case, the court of appeal affirmed a trial court's exercise of its discretion to deny a motion to set aside a stipulation. The court pointed out that, in the workers' compensation arena, stipulations should be encouraged in order to expedite proceedings. (*Id.* at p. 791.) No such policy exists here, of course. In addition, in *Robinson* the party seeking to withdraw from the stipulation was aware, prior to entering into it, of the facts on which its desire to withdraw was based. (*Ibid.*) Here, on the other hand, the trial court determined that the Loars were not aware, at the time they entered into the stipulation to arbitrate, of the extent of their claims against parties who were not bound by the arbitration agreement. As we have explained, this inference was not an unreasonable one.

The Singers also assert that the documents discovered by the Loars after they stipulated to the arbitration are insignificant. The trial court, however, concluded that the documents revealed that the difficulties with the roof might have been far greater than the Loars had understood when they agreed to arbitrate. That the Singers see this differently does not invalidate the trial court's decision.

Similarly, although the Singers point out that the Loars were already aware of the identity of the parties who were not bound by the arbitration agreement (and in fact had already named most of them in their amended complaint) before agreeing to arbitrate against the Singers, the trial court had before it evidence that the Loars had determined, during the arbitration discovery period, that their claims against Raneri & Long and the Singers' broker were far more serious than they had originally believed and involved the same facts. The trial court did not abuse its discretion in concluding that arbitrating only the claims against the Singers before turning to the interrelated claims against the other parties to the dispute would not serve the interests of justice and judicial economy.

IV. DISPOSITION

The order appealed from is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.